In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1799

CRAIG WARNER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Western District of Texas, petitioners were convicted of conspiracy to import marijuana into the United States, in violation of 21 U.S.C. 176a. In addition petitioner Kranzthor was convicted of a substantive violation of that section. Kranzthor was sentenced to two concurrent ten-year terms of imprisonment. Frank Daniels was sentenced under the Youth Corrections Act (18 U.S.C. 5005, et seq.). The other five petitioners were all sentenced to six years' imprisonment.

The facts of this case, which involve the smuggling of 800 pounds of marijuana into the United States from Mexico, are set out in full in the opinion of the court below, on which we rely. As the court below held, these facts amply support the jury's verdict.

Although 21 U.S.C. 176a requires importers of marijuana to declare that fact at the customs station; that requirement does not have the Fifth Amendment infirmities found in such cases as *Marchetti* v. *United States*, 390 U.S. 39, and *Grosso* v. *United States*, 390 U.S. 62. If a declaration is made, that declaration leads only to seizure of the marijuana at the border and not to incrimination under state or federal law, only an importation without declaration is an offense. *Walden* v. *United States*, 417 F. 2d 698 (C.A. 5). *United States* v. *Houle*, 428 F. 2d 816 (C.A. 5), certiorari denied, 400 U.S. 882; *Witt* v. *United States*, 413 F. 2d 303 (C.A. 9), certiorari denied, 396 U.S. 932; *United States* v. *DePolanco*, 422 F. 2d 1304 (C.A. 9); *United States* v. *Ashbrook*, 433 F. 2d 988 (C.A. 9), certiorari denied, March 1, 1971 (No. 1055 this Term).

Petitioners have no cause for complaint about the presumption regarding the origin of marijuana which this court struck down in *Leary* v. *United States*, 395 U.S. 6. As they appear to admit, the presumption was not used in this case (Pet. p. 14-15), and there was ample evidence of the Mexican origin of the marijuana here involved.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1971.

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